

State of California

Public Utilities Commission
San Francisco

M E M O R A N D U M

Date : July 2, 2004

To : **The Commission**
(Meeting of July 8, 2004)

From: Barbara Hale, Director of Division of Strategic Planning
Harvey Y. Morris, Principal Counsel

Subject: **H.R. 4413** – Proposed Liquefied Natural Gas (LNG) Import
Terminal Development Act of 2004 -- Bill to Exclude States from
LNG Siting Decisions Along States' Coast

Staff Recommendation: Oppose.

Summary: This bill proposes to amend section 3 of the Natural Gas Act, 15 U.S.C. § 717b, by adding a new subpart (d), which would grant the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over siting LNG import terminals and therefore preclude any state or local government from having any decisionmaking authority with respect to the siting of the LNG import terminals. It also proposes to add a new subpart (e), which would arguably grant the FERC the right to dictate the schedule for state administrative proceedings that involve intrastate natural gas pipeline transportation of the LNG-converted natural gas from the terminal.

Digest: Existing law, Section 7 of the Natural Gas Act, 15 U.S.C. § 717f, authorizes FERC certification of onshore LNG facilities involving interstate pipelines; Deepwater Ports Act, 33 U.S.C. §§ 1501, *et seq.* authorizes the Coast Guard to site LNG facilities in federal waters; California Public Utilities Code §§1001, *et seq.* authorizes the California Public Utilities Commission (CPUC) to certify onshore LNG facilities involving intrastate pipelines.

Analysis: This Bill is unnecessary. LNG Facilities will be built without its passage. Sufficient federal and state authority already exists. This Bill gives FERC exclusive jurisdiction over LNG facility siting and operation and would

have a devastating effect on the states' power and sovereignty over such facilities. States should have the power to protect the safety of their citizens and their environment.

The Commission should oppose H.R. 4413 based on the following reasons:

1. Sufficient federal authority already exists under section 7 of the Natural Gas Act, 15 U.S.C. § 717f, for FERC certification of onshore LNG facilities involving interstate pipelines and interstate commerce; and under the Deepwater Ports Act, 33 U.S.C. §§ 1501, *et seq.* for the Coast Guard to site LNG facilities in federal waters. State agencies, such as the CPUC, have sufficient authority under state laws to site LNG facilities in their states, which do not involve interstate pipelines.
2. Even without H.R. 4413, more than 40 LNG projects have been proposed around the United States and Mexico.
3. State agencies have historically sited LNG terminals but generally away from population centers; the CPUC sited an LNG terminal in late 1970s at Point Conception; many states have sited LNG facilities for peak usage.
4. States should be regulating the safety and siting of LNG facilities in their states, which do not involve interstate pipelines, because the states regulate the intrastate pipelines that interconnect with the LNG facilities.
5. States have a much better understanding than the FERC of the natural physical aspects of a location, such as the effects from a major earthquake on a proposed LNG facility.
6. This bill is inconsistent with numerous federal statutes in which Congress has respected the states' right to protect their coastlines, the safety of their citizens and their environment, e.g. the Coastal Zone Management Act, the Natural Gas Pipeline Safety Act, the Clean Water Act, the Clean Air Act.

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